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## **ARTICLE XVI. ADJUDICATION OF PARKING CITATIONS**

### **Sec. 45-380. Jurisdiction.**

The municipal courts judicial department shall have original jurisdiction over cases involving violations of city ordinances enumerated in articles VI and XVII of this chapter and of division 1 of article VII of this chapter and of offenses involving the parking or stopping of a vehicle that arise under the Fire Code of the city.

(Ord. No. 95-81, § 1, 1-25-95; Ord. No. 95-186, § 3, 2-22-95; Ord. No. 01-759, § 6, 8-15-05; Ord. No. 04-799, § 5, 7-28-04; Ord. No. 06-533, § 2, 5-31-06)

### **Sec. 45-381. Procedures.**

The director of the municipal courts judicial department shall establish and implement appropriate procedures to effect the policy of this article.

(Ord. No. 95-81, § 1, 1-25-95; Ord. No. 06-533, § 2, 5-31-06)

### **Sec. 45-382. Adjudicative hearing officers.**

(a) The municipal courts judicial department shall employ one or more adjudicative hearing officers who shall be appointed by the mayor. Staff required for the support of the adjudicative hearing officer's functions shall be provided by the clerk of the municipal courts.

(b) Adjudicative hearing officers shall have the authority to administer oaths and to issue orders compelling the attendance of witnesses and production of documents.

(c) An order compelling the attendance of witnesses or production of documents may be enforced by the municipal courts judicial department.

(Ord. No. 95-81, § 1, 1-25-95; Ord. No. 06-533, § 2, 5-31-06)

### **Sec. 45-383. Parking citations.**

(a) The administrative adjudication process for parking or stopping of vehicle violations that are subject to adjudication under this article shall be initiated by the issuance of a parking citation. A

citation may be issued by a peace officer or other authorized parking enforcement agent designated by or upon authority of the city.

(b) If the owner or operator of the vehicle is not present at the time of issuance of the citation, the citation may be issued by affixing the citation to the vehicle in a conspicuous place.

(c) The citation shall provide that the person charged with a parking, stopping or standing offense shall have the right of an instant hearing to determine the issue of liability for the charged offense. Such right to a hearing shall be exercised by appearing in person before an adjudicative hearing officer within 45 days from the date of issuance of the citation at such convenient and reasonable hours as may be specified by the adjudicative hearing officer, which hours shall be printed on the parking citation. In lieu of an instant hearing the person charged may appear in person or through legal counsel before an adjudicative hearing officer within 45 days from the date of issuance of the citation, post a cash bond for fines, costs and fees in an amount to be established by the adjudicative hearing officer and shall then be scheduled for a hearing before the adjudicative hearing officer at a date and time certain within 30 days of such appearance.

(d) The original or any copy of the citation is a record kept in the ordinary course of business in the city and is rebuttable proof of the facts it contains.

(Ord. No. 95-81, § 1, 1-25-95; Ord. No. 95-186, § 4, 2-22-95; Ord. No. 06-533, § 2, 5-31-06)

### **Sec. 45-384. Presumption of ownership.**

(a) It is presumed that the registered owner of the motor vehicle that is the subject of the administrative hearing is the person who parked or stopped the vehicle at the time and place of the offense charged.

(b) A state department of transportation computer-generated record of the registered vehicle is a prima facie evidence of its contents in an administrative adjudication hearing under this article.

(Ord. No. 95-81, § 1, 1-25-95; Ord. No. 06-533, § 2, 5-31-06)

**Sec. 45-385. Hearings.**

(a) At the hearing before the adjudicative hearing officer, the person charged may either admit, admit with explanation, or deny the alleged infraction.

(b) The issuing peace officer or other authorized parking enforcement agent shall not be required to attend the hearing.

(c) It is not required that the prosecuting attorney attend the hearing. Provided, however, that if the person charged is represented by legal counsel at the hearing, the adjudicative hearing officer shall notify the prosecuting attorney who shall have a right to appear on behalf of the city at said hearing.

(d) No formal or sworn complaint shall be necessary. The adjudicative hearing officer shall examine the contents of the citation and the evidence related to ownership of the vehicle in question, and shall hear and review the testimony and evidence presented by the person charged. If the adjudicative hearing officer determines by the preponderance of the evidence that the violation was committed by the person charged, he shall find the person charged liable therefor.

(e) At the conclusion of the hearing, the adjudicative hearing officer shall issue an order stating whether or not the person charged is liable for violation of the parking or stopping ordinance and the amount of any fine, costs, or fees assessed against him. The order and all other records of the proceeding shall be filed with the clerk of the municipal court. All such orders shall be kept in a separate index or file by the clerk of the municipal court. The filing of the order and other records of the proceeding shall be kept in accordance with Section 682.009 of the Texas Transportation Code

(f) Failure of a person charged with the offense to appear before an adjudicative hearing officer within 45 days from the issuance of the citation shall be considered an admission of liability for the charged offense and an order shall be issued on that basis. In the event that the person charged elects to appear by posting a bond and obtaining a scheduled hearing at a date and time certain, the failure of the person charged to appear in person

or through counsel at the hearing as scheduled shall also be considered an admission of liability and an order may be issued on that basis.

(g) Fines for violations shall be as provided in section 45-22 of this Code. The presiding judge shall establish fines for persons who do not wish to contest their citations and for persons who admit liability under subsection (f), above. The presiding judge shall establish the amount of any added fine that shall be payable if a citation or fine ordered by an adjudicative hearing officer is not fully satisfied or a bond is not posted within 45 days from the date of issuance of the citation.

(h) Court costs shall be payable on all citations in the amounts required by law including, but not limited to, the fees payable under section 16-8 of this Code. The court costs shall be disposed of as provided in section 16-8, or as otherwise provided by law. All other fines and fees shall be deposited in the city treasury as general revenues of the city.

(i) The clerk of the municipal courts shall cause a video or audio tape record to be made of each hearing and shall retain the tape and any documents introduced at the hearing until the time for an appeal to be filed has expired. (Ord. No. 95-81, § 1, 1-25-95; Ord. No. 06-533, § 2, 5-31-06)

**Sec. 45-386. Appeal.**

(a) A person determined by the adjudicative hearing officer to be in violation of a parking or stopping ordinance may appeal the determination to the municipal court.

(b) The appeal must be instituted by filing, not later than the thirtieth day after the filing of the adjudicative hearing officer's order, a petition with the clerk of the municipal court along with payment of a nonrefundable administrative appeal fee in the amount of \$10.00 for the first citation and \$5.00 for each additional citation that is appealed, as well as payment of any other costs required by law.

(c) After filing a petition for appeal, the clerk of the municipal court shall schedule a hearing and notify all parties of the date, time and place of the hearing.

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(d) The appeal shall be decided under the substantial evidence rule and on the basis of the evidence adduced at the hearing before the adjudicative hearing officer. The record shall be provided to the court by the clerk of the municipal courts. If the municipal court finds the record to be materially incomplete, the municipal court may upon its own motion or upon motion of the defendant or the prosecuting attorney refer the case back to the adjudicative hearing officer for further proceedings; however, no evidence may be adduced at the appeal hearing. The court shall not reverse the adjudicative hearing officer's decision unless it is determined to be (i) in violation of law, (ii) not reasonably supported by substantial evidence, based upon a review of the reliable and probative evidence in the record as a whole, or (iii) arbitrary and capricious or characterized by an abuse of discretion.

(e) Service of notice of appeal under this section does not stay the enforcement and collection of the adjudicative hearing officer's order unless the person who files the appeal also posts a cash appeal bond with the clerk of the municipal court. The appeal bond shall be in the amount of all fines, costs and fees assessed by the adjudicative hearing officer.

(Ord. No. 95-81, § 1, 1-25-95; Ord. No. 06-533, § 2, 5-31-06)

#### **Sec. 45-387. Enforcement.**

In addition to the added fine amount for delayed payment as provided in section 45-385(g) of this Code, the failure to comply with an order issued under this article may be enforced in any of the other manners provided in Section 682.010 of the Texas Transportation Code.

(Ord. No. 95-81, § 1, 1-25-95; Ord. No. 06-533, § 2, 5-31-06)

#### **Secs. 45-388—45-400. Reserved.**

### **ARTICLE XVII. RESIDENTIAL PARKING PERMITS**

#### **DIVISION 1. GENERALLY**

##### **Sec. 45-401. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Commuter vehicle* means a motor vehicle, other than a "resident vehicle" as defined herein, that is parked in a residential area in which it is not registered with the Texas Department of Transportation.

*Curbside parking space* means 20 linear feet of curb, excluding those portions of the curb where the parking of any motor vehicle is not permitted.

*Permit* means a current and valid permit issued under division 3 of this article.

*Resident* means the owner or tenant of residential property in a residential area or the tenant of an apartment complex with not more than 16 units in a residential area.

*Resident vehicle* means a motor vehicle parked in a residential area in which it is registered with the Texas Department of Transportation.

*Residential* means pertaining to the use of land for premises such as single-family homes, duplexes, condominiums and apartment complexes with eight or fewer units, that contain habitable rooms for nontransient occupancy and are designed primarily for living, sleeping, cooking and eating therein. A premises that is designed primarily for living, sleeping, cooking and eating therein will be deemed to be residential in character unless it is actually occupied and used exclusively for other purposes. Hotels, suites hotels, motels, apartment complexes with nine or more units, boardinghouses and day care centers shall not be considered to be residential.

*Residential area* means a contiguous area containing or bounded by public streets or parts thereof abutted by residential property occupying at least 75 percent of the front footage along the

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blockface. A residential area may be one or more blockfaces within a larger residential area, provided that the director can consider a street of 750 feet in length or greater to be two blockfaces of approximately equal length for purposes of this article if requested by the applicants.

*Residential parking permit area* means an area designated pursuant to division 2 of this article. (Ord. No. 01-759, § 2, 8-15-01; Ord. No. 05-1160, § 2, 10-19-05; Ord. No. 06-533, § 3, 5-31-06)

**Sec. 45-402. Compliance with other laws.**

A parking permit issued pursuant to this article does not excuse compliance with any other provisions of state law or this Code relating to parking, including, but not limited to, parking meter payment, "no parking" signs and restricted parking for persons with disabilities.

(Ord. No. 01-759, § 2, 8-15-01; Ord. No. 06-533, § 3, 5-31-06)

**Sec. 45-403. Offenses.**

(a) It shall be unlawful for any person to park a motor vehicle that does not display a permit in a curbside parking space on any day or during any hours for which commuter vehicle parking is prohibited by official signs posted in a residential parking permit area.

(b) It shall be unlawful for any person to represent in any fashion that a motor vehicle is entitled to a permit authorized by this article when it is not so entitled. The display of a permit on a motor vehicle not entitled to the parking permit shall constitute such a representation.

(c) It shall be unlawful for any person to duplicate, or attempt to duplicate, by any means, a permit authorized by this article. It also shall be a violation of this article for any person to display on any motor vehicle a duplicate permit.

(Ord. No. 01-759, § 2, 8-15-01; Ord. No. 06-533, § 3, 5-31-06)

**Sec. 45-404. Revocation of permit.**

In addition to the penalties provided for violation of this article, the parking official shall revoke the residential parking permit and any associated visitor permit of any person found to

have committed three or more violations of this article within any one year period. Upon a determination by the parking official that a person who holds a permit has been adjudicated to have committed the number of violations set forth in the preceding sentence within the prescribed period, the parking official shall provide written notification to such person by certified mail, return receipt requested, revoking the permit and ordering the surrender of any visitor permits held under the permit to the parking official. Failure to surrender a revoked visitor permit when requested to do so shall constitute a separate violation of this article, and a signed return receipt shall be prima facie evidence of the delivery of the notice to surrender such permit.

(Ord. No. 01-759, § 2, 8-15-01; Ord. No. 06-533, § 3, 5-31-06)

**Sec. 45-405. Defenses.**

It shall be an affirmative defense to civil prosecution for violation of this article that the motor vehicle parked in a residential parking permit area was:

- (1) A motor vehicle owned by or operated under contract to a utility and in actual use in the construction, operation, removal or repair of utility property or facilities or engaged in authorized work in the designated residential parking permit area;
- (2) A motor vehicle that was clearly identified as owned by or operated under contract to a federal, state, or local governmental agency, was being used in the course of official government business, and was not parked while the operator was working at his customary office or job site;
- (3) An authorized emergency vehicle; or
- (4) A motor vehicle used for delivery or service business purposes, including but not limited to motor vehicles such as moving vans and sanitation, repair, electrical and plumbing service motor vehicles, that was parked in a residential parking permit

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area while conducting business at a residence in the residential parking permit area.

(Ord. No. 01-759, § 2, 8-15-01; Ord. No. 06-533, § 3, 5-31-06)

**Sec. 45-406. Cumulative effect.**

This article is cumulative of other requirements imposed by ordinances and regulations of the city. To the extent of any inconsistency, the more restrictive provision shall govern. The authority granted by this article is cumulative of the powers granted by this chapter and does not limit the authority of the traffic engineer or other officers authorized to regulate traffic.

(Ord. No. 06-533, § 3, 5-31-06)

**Sec. 45-407. Adjudication.**

Cases involving violations of the parking provisions of this article shall be adjudicated before adjudicative hearing officers of the municipal courts judicial department.

(Ord. No. 06-533, § 3, 5-31-06)

**Secs. 45-408—45-410. Reserved.**

**DIVISION 2. DESIGNATION OF  
RESIDENTIAL PARKING PERMIT AREAS**

**Sec. 45-411. Designation.**

(a) The city council may designate residential areas within the city with chronic commuter parking problems as residential parking permit areas pursuant to the procedures of this division. For purposes of this division, a 'chronic commuter parking problem' means the occupancy of curbside parking spaces by commuter vehicles at the same hours and on the same days, but shall not mean parking for events which by their nature are expected to occur on a frequency of less than once every two weeks.

(b) In carrying the functions assigned by this division, the parking official shall consult with and obtain the concurrence of the traffic engineer.  
(Ord. No. 01-759, § 2, 8-15-01; Ord. No. 06-533, § 3, 5-31-06)

**Sec. 45-412. Request for designation.**

(a) A request for designation of a residential parking permit area shall be initiated by petition of residents within the proposed residential parking permit area. The minimum residential area for which a petition for designation may be submitted is one blockface, including both sides of the street if both sides are residential or one residential blockface if the opposing blockface is not residential. The request shall be filed with the parking official upon a form promulgated for that purpose by the parking official, and shall include, at a minimum, the following:

- (1) A description of the residential area proposed to be included in the residential parking permit area;
- (2) A description of the chronic parking problem or condition to be remedied;
- (3) Evidence of neighborhood support for the project;
- (4) The name, address and telephone number of a resident in the proposed residential parking permit area who shall be the contact for the request;
- (5) The names and addresses of all residents within the proposed residential parking permit area;
- (6) Any other information reasonably required by the parking official to make any determination required under this article.

The parking official shall immediately forward a copy of all information relating to the request to the traffic engineer.

(b) The parking official initially shall review each request for completeness. If the parking official determines that the request is complete, the request shall be acted upon as further provided in this article. If the parking official determines that the request is incomplete, he shall return the request with written notice of the deficiencies.

(Ord. No. 01-759, § 2, 8-15-01; Ord. No. 06-533, § 3, 5-31-06)

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**Sec. 45-413. Parking survey.**

Upon receipt of a complete application for designation of a residential parking permit area, the parking official shall conduct or cause to be conducted a parking survey of the proposed residential parking permit area. The parking survey shall be conducted in the manner prescribed by the traffic engineer. The parking survey shall determine the following information, as well as any other information that the parking official or the traffic engineer determines will be useful to verify the chronic commuter parking problem identified in the application:

- (1) The total number of legal curbside parking spaces in the proposed residential parking permit area;
  - (2) The number of legal curbside parking spaces that are occupied by motor vehicles;
  - (3) The number of curbside parking spaces that are occupied by commuter vehicles; and
  - (4) The general hours of occupancy of curbside parking spaces by commuter vehicles.
- (Ord. No. 01-759, § 2, 8-15-01; Ord. No. 06-533, § 2, 5-31-06)

**Sec. 45-414. Criteria for designation.**

The parking official, in making a determination of approval or disapproval with respect to designation, and the city council, in making a designation, shall consider the results of the parking survey and the following criteria:

- (1) The extent to which curbside parking spaces are occupied by motor vehicles. The total number of curbside parking spaces occupied by motor vehicles at the minimum must exceed 60 percent of the number of curbside parking spaces on the public streets of the proposed residential parking permit area for the area to be eligible for designation;
- (2) The extent to which motor vehicles parking in the area are commuter vehicles. The total number of curbside parking spaces occupied by commuter vehicles dur-

ing any one-hour period must equal or exceed 25 percent of the total number of curbside parking spaces occupied by motor vehicles in the proposed residential parking permit area for the area to be eligible for designation;

- (3) The extent to which residents cannot obtain adequate curbside parking adjacent to or near their residences because of widespread use of available curbside parking spaces by commuter vehicles;
  - (4) The time or times of day of greatest commuter parking in the period surveyed;
  - (5) The effect on the safety of the residents from intensive commuter vehicle parking;
  - (6) The existence of air and noise pollution, hazardous conditions, and deterioration of the residential environment as a result of traffic congestion and insufficient parking in the area;
  - (7) The extent and availability to the general public of parking in the residential district;
  - (8) The extent that the designation of a residential parking permit area would be likely to reduce traffic congestion and any other problems identified in this section;
  - (9) Evidence of support of the residents in the proposed residential parking permit area for the institution of a residential parking permit system and the willingness of those residents to bear the costs incidental to the issuance of parking permits authorized by this article;
  - (10) Whether the problems identified in this section can reasonably and feasibly be solved at no additional cost to the city through an alternative to the designation of a residential parking permit area; and
  - (11) Any other traffic issue identified by the traffic engineer.
- (Ord. No. 01-759, § 2, 8-15-01; Ord. No. 06-533, § 3, 5-31-06)

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**Sec. 45-415. Parking regulations.**

If the parking official determines that an application for designation meets the criteria for designation, he shall so notify the traffic engineer, who shall develop for the proposed residential parking permit area proposed parking regulations that shall establish the days of the week and the times of day that parking by commuter vehicles shall be prohibited in the residential parking permit area. Nothing in this article shall require the traffic engineer to develop any parking regulations for a proposed residential parking permit area for days and times the traffic engineer determines parking would interfere with traffic mobility. The parking official may include his recommendations regarding the residential parking permit area in the notification to the traffic engineer.

(Ord. No. 01-759, § 2, 8-15-01; Ord. No. 05-1160, § 3, 10-19-05; Ord. No. 06-533, § 3, 5-31-06)

**Sec. 45-416. Public hearing.**

(a) After determining that an application for designation meets the criteria for designation and developing the proposed regulations for the residential parking permit area, the parking official shall conduct a public hearing to receive comment on the designation of the proposed residential parking permit area and the proposed parking regulations.

(b) The parking official shall give notice of the public hearing no less than 15 days before the date of the public hearing as follows:

- (1) Notice shall be given by mail, addressed to "Occupant," of property within the boundaries of the proposed residential parking permit area; and
- (2) Notice in the form prescribed by the parking official shall be published once in a newspaper of general circulation in the city at least ten days prior to the hearing.

(c) The notice shall clearly state the purpose, date, time and location of the public hearing; the location and boundaries of the proposed residential parking permit area; the regulations proposed for the area; and the parking permit fees that will be charged.

(d) Written notice that is given by mail shall be deemed given when it is deposited in the United States mail, properly addressed, postage paid. The affidavit of a person who has knowledge of the fact that notice was mailed is prima facie evidence that notice has been given as required by this section.

(e) At the public hearing, any interested person, including the traffic engineer, may present testimony, orally or in writing, with respect to the proposed residential parking permit area, the proposed regulations and the permit fees. The parking official may establish rules for the conduct of the public hearing.

(Ord. No. 01-759, § 2, 8-15-01; Ord. No. 05-1160, § 4, 10-19-05; Ord. No. 06-533, § 3, 5-31-06)

**Sec. 45-417. Parking official action.**

Following the close of the public hearing, the parking official shall approve or disapprove the proposed residential parking permit area or modify the proposal in response to public comment. If the parking official approves the proposal, with or without modification, he shall recommend the application and the parking regulations developed by the traffic engineer to the city council for designation of the residential parking permit area. If the parking official does not approve the proposal, he shall so advise the applicant, and the application shall not be submitted to the city council.

(Ord. No. 01-759, § 2, 8-15-01; Ord. No. 06-533, § 3, 5-31-06)

**Sec. 45-418. City council action.**

City council designation of a residential parking permit area shall be by motion. Designation of a residential parking permit area shall be effective 60 days after passage of the motion designating the district.

(Ord. No. 01-759, § 2, 8-15-01; Ord. No. 06-533, § 3, 5-31-06)

**Sec. 45-419. Notice to residents.**

As soon as practicable following the designation of a residential parking permit area, the parking official shall mail to the occupant of every

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address within the designated residential parking permit area a written notice that shall contain the following information:

- (1) The existence, boundaries and numerical designation of the residential parking permit area;
  - (2) The parking restrictions applicable to all motor vehicles in curbside parking spaces along public streets in the designated area that do not properly display a permit authorized by this article;
  - (3) The effective date of the regulations;
  - (4) The procedures and associated fees to obtain a residential or visitor permit; and
  - (5) An application for a residential permit on the form to be prescribed by the parking official.
- (Ord. No. 01-759, § 2, 8-15-01; Ord. No. 06-533, § 3, 5-31-06)

**Secs. 45-420—45-429. Reserved.**

DIVISION 3. PERMITS

**Sec. 45-430. Residential permits.**

(a) Upon submission of a complete residential permit application to the parking official by a resident of a residential parking permit area, and payment of the fee prescribed in this article, an applicant shall be entitled to receive one residential permit for each motor vehicle described in the application in accordance with the schedule set forth in section 45-433.

(b) A residential permit shall be valid for one year from its date of issuance and may be renewed for as long as the motor vehicle qualifies for a residential permit; provided, that no permit that has been revoked pursuant to section 45-404 of this Code shall be reissued for a period of two years from the date of such revocation.

(c) No residential permit shall be issued for a motor vehicle whose owner or principal operator does not reside within the designated residential parking permit area.

(d) A residential permit issued for a motor vehicle that no longer qualifies for a residential permit is void.

(e) An applicant may obtain a replacement residential permit in the same manner and for the same fee as the original residential permit upon providing evidence satisfactory to the parking official that the original permit has been destroyed.

(Ord. No. 01-759, § 2, 8-15-01; Ord. No. 06-533, § 3, 5-31-06)

**Sec. 45-431. Visitor permits.**

Upon application of any resident of a residential parking permit area, the parking official shall issue to the resident no more than the number of visitor permits determined from the schedule in section 45-433 that will allow motor vehicles displaying the visitor permit to park in curbside spaces in the residential parking permit area except where or at times otherwise prohibited. Each visitor permit shall be valid for one year from the date of issuance. For purposes of this article, the resident shall be the holder of and responsible for the use of any visitor permit issued to the resident.

(Ord. No. 01-759, § 2, 8-15-01; Ord. No. 06-533, § 3, 5-31-06)

**Sec. 45-432. Permit fees.**

The schedule of fees established pursuant to section 45-433 shall be applicable initially to the permits authorized to be issued pursuant to this article. The parking official shall determine annually in connection with the city's fiscal year whether an increase or decrease in these fees is required for the continued operation of the residential parking permit program and are hereby authorized to make adjustments annually to the schedule of fees. The parking official shall not issue any permit unless and until the applicable fee has been paid.

(Ord. No. 01-759, § 2, 8-15-01; Ord. No. 06-533, § 3, 5-31-06)



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**Schedule of permits and fees.**

Number of Motor Vehicles Registered				
	0	1	2	2+
Residential Permits Allowed Per Residential Unit				
Number	0	1	2	2+
Cost of each permit	NA	\$20.00	\$20.00	\$20.00
Visitor Permits Allowed Per Residential Unit				
Number	4	3	2	2
Cost of first permit	\$20.00	\$20.00	\$2.00	\$2.00
Cost of second permit	\$20.00	\$2.00	\$2.00	\$2.00
Cost of each additional permit	\$2.00	\$2.00	NA	NA

(Ord. No. 01-759, § 2, 8-15-01; Ord. No. 06-533, § 3, 5-31-06)

**Sec. 45-434. Display of permits.**

(a) Each residential permit shall be permanently adhered to the inside bottom driver side corner of the rear window of the motor vehicle. A permit that is not permanently adhered shall not be a valid permit.

(b) All visitor permits shall be displayed inside the motor vehicle hanging from the rear view mirror so that the permit is easily visible from outside the motor vehicle.

(Ord. No. 01-759, § 2, 8-15-01; Ord. No. 06-533, § 3, 5-31-06)

**Sec. 45-435. Effect of issuance of permit.**

(a) A residential or visitor permit shall not guarantee or reserve a curbside parking space within a residential parking permit area. A permit issued pursuant to this article shall not authorize the standing or parking of any motor vehicle in any place or during any time when the stopping, standing or parking of motor vehicles is prohibited or set aside for specified motor vehicle types. The issuance of a permit shall not excuse the observance of any traffic regulation.

(b) Whenever the holder of a permit, or the motor vehicle for which a residential permit was issued, no longer fulfills one or more of the applicable provisions of this article controlling issuance or renewal of permits, the holder shall notify the parking official, who shall direct the holder to surrender the permit or present evidence that the permit has been removed from the motor vehicle.

(c) Until its expiration, surrender or revocation, a permit shall remain valid for the length of time the holder continues to reside within the designated residential parking permit area.

(d) A permit shall be valid only in the residential parking permit area for which it is issued. (Ord. No. 01-759, § 2, 8-15-01; Ord. No. 06-533, § 3, 5-31-06)

**Secs. 45-436—45-450. Reserved.**

**ARTICLE XVIII. CERTAIN TRAFFIC CONTROL DUTIES**

**DIVISION 1. GENERAL**

**Sec. 45-451. Definitions.**

As used in this article, the following words and terms shall have the meanings ascribed to them in this section:

*Off-duty*, with respect to a peace officer, means any time other than while the officer is on-duty, as defined herein.

*On-duty*, with respect to a peace officer, means while performing functions or activities during work hours assigned by the jurisdiction through which the officer holds his commission and for which the officer receives wages that are paid by that jurisdiction.

*Peace officer* shall mean a person holding a permanent peace officer license issued under chapter 1701, Texas Occupations Code.

*Police chief* means the Chief of the Houston Police Department.

*Traffic control permit* means a current and valid permit issued by the police chief pursuant to division 2 of this article to conduct traffic direction.

*Traffic direction* means any activity by which a peace officer directs vehicular or pedestrian traffic upon a street or upon other property situated in such proximity to a street that the activity affects the flow of vehicular or pedestrian traffic upon a street for the purpose of facilitating ingress or egress to a street in the

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city from another street, a private street, parking lot, parking garage or other private property. The activity includes, but is not limited to control of traffic by hand signals, whistle or verbal directions, or the assumption of control of the functions of an otherwise automated traffic signal light or control device. The term shall not include the direction of traffic in connection with any construction occurring within or upon a street by personnel employed for that purpose, as authorized by chapter 472, Texas Transportation Code.  
(Ord. No. 04-798, § 2, 7-28-04)

- (2) The actor is a peace officer of the city or another jurisdiction of this state and con-

**Sec. 45-452. Prohibited conduct; defenses.**

(a) During the hours between 6:00 a.m. and 7:00 p.m. on any Monday, Tuesday, Wednesday, Thursday, or Friday, other than a holiday observed by the closure of city offices, it shall be unlawful within the city:

- (1) For any person other than a peace officer to conduct or engage in traffic direction; or
- (2) For any off-duty peace officer to conduct or engage in traffic direction unless a traffic control permit for that activity has been issued pursuant to this article; or
- (3) For any person to hire, employ or otherwise cause, suffer or permit any person to conduct or engage in traffic direction for or on behalf of such person, unless a traffic control permit has been issued pursuant to this article; or
- (4) For any person to conduct or engage in, or hire, employ or otherwise cause, suffer or permit another to conduct or engage in, traffic direction in violation of the terms of a traffic control permit.

(b) It is an affirmative defense to prosecution under this section that:

- (1) The actor is an on-duty peace officer of a jurisdiction other than the city and is conducting or engaging in traffic direction within the legally authorized territory of that jurisdiction;

ducts or engages in traffic direction in an emergency situation, provided that the actor does not receive any additional compensation for conducting or engaging in the traffic direction; or

- (3) The actor is a school crossing guard acting pursuant to chapter 541 of the Texas Transportation Code and is conducting or engaging in traffic direction for the protection of children going to or leaving school within a school crossing zone.
  - (4) The actor is otherwise expressly authorized by law to conduct or engage in traffic direction.
- (Ord. No. 04-798, § 2, 7-28-04)

#### **Sec. 45-453. Rules; forms; fees.**

(a) The police chief, in consultation with the director of public works and engineering or his designee, may issue rules and regulations for the operation of this article and shall promulgate application and permit forms, which shall be approved by the city attorney prior to use.

(b) The initial fee for the issuance of a traffic control permit shall be \$100.00. The fee shall be reviewed and approved by the director of finance and administration on an annual basis and adjusted to fully recover the city's costs, taking into account permit issuance and renewal costs, inspection and oversight services that may be required, and equipment and resource utilization, provided that no fee increase in excess of 15 percent shall be implemented without prior approval of the city council.

(c) The director of public works and engineering or his designee may also establish a fee for traffic engineer reviews required under this article, which fees shall be reviewed and adjusted on an annual basis in the manner established in the preceding subsection.

(d) Applicants must represent that only off-duty peace officers with appropriate training will perform traffic direction under the permit.

(Ord. No. 04-798, § 2, 7-28-04)

#### **Sec. 45-454. Disposition of fees.**

All fees generated under this article, except those for traffic engineering reviews, shall be allocated to the police special services fund administered by the police department.

(Ord. No. 04-798, § 2, 7-28-04)

#### **Sec. 45-455. Hearings.**

Any person who is aggrieved by the action of the police chief in failing to approve an application or in terminating a traffic control permit under this article shall be entitled to a hearing on the matter. The hearing shall be conducted by a hearing officer designated for that purpose by the police chief and shall be conducted informally but in a manner consistent with principles of due process. The hearing officer's decision on the matter shall be final.

#### **Secs. 45-456—45-460. Reserved.**

### **DIVISION 2. TRAFFIC CONTROL PERMITS**

#### **Sec. 45-461. Application for traffic control permit.**

Any person who desires a traffic control permit may make application for the permit to the police department upon forms promulgated for that purpose as provided in section 45-453.

(Ord. No. 04-798, § 2, 7-28-04)

#### **Sec. 45-462. Traffic engineering review.**

All applications for a traffic control permit shall be reviewed by the traffic engineer. The rules established pursuant to section 45-453 of this Code for the consideration of applications for traffic control permits shall ensure that the provision of traffic direction requested by an applicant is consistent with sound principles of traffic engineering and public mobility. Consistent with those criteria, the traffic engineer may require that certain applications also include the traffic engineer's approval of a traffic engineering study to be provided by the applicant and prepared by a professional engineer acceptable to the traffic engineer.

(Ord. No. 04-798, § 2, 7-28-04)

**Sec. 45-463. Action on application.**

Following receipt of a complete application and any required fee, the police department shall cause the application to be reviewed for compliance with this article and any applicable rules, including review by the traffic engineer. The police department shall notify the applicant whether the application has been approved or denied. If it is denied, then the grounds for denial shall be articulated in the notice.

(Ord. No. 04-798, § 2, 7-28-04)

**Sec. 45-464. Issuance of permit.**

(a) Traffic control permits shall be issued on the basis of standard forms that are promulgated under section 45-453 of this Code.

(b) Without limitation of any other requirements, the permit form shall provide that no traffic direction shall be implemented until the permit holder has prepaid the city for all applicable fees.

(c) Traffic control permits shall contain a provision that allows the police chief or his designee to terminate a permit for failure of the permit holder to comply with any applicable term of the permit upon ten days' prior written notice.

(Ord. No. 04-798, § 2, 7-28-04)

**Sec. 45-465. Services under permit.**

(a) Services under traffic control permits shall be limited to traffic direction at the times and places described in the permit. Off-duty peace officers operating under a permit issued under this article shall at all times remain subject to the full supervision and control of the police chief or his designee but shall not function in any manner as employees or agents of the department or the city.

(b) All traffic control permits are subject to the continuing supervision of the police department to ensure public safety and efficient mobility on the streets and highways of the city. The police chief or his designee may suspend all services under a traffic control permit at any time if in the opinion of the police chief such action is required to ensure the safe and efficient movement of

traffic on the streets and highways of the city. A determination by the police chief to suspend a traffic control permit shall be final.

(Ord. No. 04-798, § 2, 7-28-04)

**Secs. 45-466—45-480. Reserved.**

**ARTICLE XIX. PHOTOGRAPHIC TRAFFIC MONITORING SYSTEM**

**Sec. 45-481. Definitions.**

As used in this article, the following words and terms shall have the meanings ascribed in this section, unless the context of their usage clearly indicates another meaning:

*Intersection* means the place or area where two or more streets intersect.

*Owner* means the owner of a motor vehicle as shown on the motor vehicle registration records of the Texas Department of Transportation or the analogous department or agency of another state or country.

*Photographic traffic monitoring system* means a system that:

- (1) Consists of a camera system installed to work in conjunction with an electrically operated traffic control signal; and
- (2) Is capable of producing a recorded image that depicts the license plate of a motor vehicle that is not operated in compliance with the instructions of the traffic control signal.

*Recorded image* means an image recorded by a photographic traffic monitoring system that depicts a license plate of a motor vehicle and is automatically recorded on a photograph or digital image.

*System location* means an intersection toward which a photographic traffic monitoring system is directed and in operation.

*Traffic control signal* means a traffic control device that displays alternating red, yellow, and green lights that direct traffic when to stop at or proceed through an intersection.

(Ord. No. 04-1312, § 2, 12-21-04)

**Sec. 45-482. Imposition of civil penalty for creating dangerous intersections.**

(a) Except as provided in subsection (b) of this section, the owner of a motor vehicle is liable for a civil penalty of \$75.00 if the motor vehicle proceeds into a system location without turning when the traffic control signal for that motor vehicle's direction of travel is emitting a steady red signal.

(b) For a third or subsequent violation of this article committed by the owner of the same motor vehicle during any 12-month period, the amount of the civil penalty shall be \$150.00.

(c) An owner who fails to timely pay the civil penalty shall be subject to a late payment penalty of \$25.00.

(Ord. No. 04-1312, § 2, 12-21-04)

**Sec. 45-483. Enforcement; procedures.**

(a) The police department and the municipal courts administration department shall be responsible for the enforcement and administration of this article. The police chief and the chief clerk of the municipal courts shall establish and implement appropriate procedures to effect the policy of this article.

(b) To impose a civil penalty under this article, the municipal courts administration department shall mail or cause to be mailed a notice of violation to the owner of the motor vehicle liable for the civil penalty not later than 30 days after the date the violation is alleged to have occurred to:

- (1) The owner's address as shown on the registration records of the Texas Department of Transportation; or
- (2) If the vehicle is registered in another state or country, the owner's address as shown on the motor vehicle registration records of the department or agency of the other state or country analogous to the Texas Department of Transportation.

(c) A notice of violation issued under this article shall contain the following:

- (1) A description of the violation alleged;

- (2) The date, time, and location of the violation;
- (3) The name and address of the owner of the vehicle involved in the violation;
- (4) The license plate number of the vehicle involved in the violation;
- (5) A copy of a recorded image of a license plate of the vehicle involved in the violation;
- (6) The amount of the civil penalty to be imposed for the violation;
- (7) A statement that the person named in the notice of violation may pay the civil penalty in lieu of appearing at an administrative adjudication hearing;
- (8) The date by which the civil penalty must be paid;
- (9) Information that informs the person named in the notice of violation:
  - a. Of the right to contest the imposition of the civil penalty in an administrative adjudication;
  - b. Of the manner and time to contest the civil penalty;
  - c. That failure to pay the civil penalty or to contest liability in a timely manner is an admission of liability and that failure to appear at an administrative adjudication hearing after having requested a hearing is an admission of liability and constitutes a waiver of the right to appeal under section 45-487 of this Code; and
  - d. That failure to pay the civil penalty within the time allowed shall result in the imposition of a late-payment fee of \$25.00; and
- (10) A statement that, if at the time and place of the violation the vehicle was being operated by a person other than the owner, then the owner may transfer liability for the violation to the person who was operating the vehicle at that time and place if the owner submits to the city by affidavit,

on a form provided by the city, or under oath at an administrative adjudication hearing, the name and current address of the person:

- a. Who was operating the vehicle at the time and place of the violation;
- b. Who was the lessee of the vehicle at the time of the violation, if the vehicle was rented or leased from a person in the business of renting or leasing motor vehicles at that time; or
- c. Who was the subsequent owner of the motor vehicle, if ownership of the vehicle was transferred by the owner before the time of the violation.

(d) A notice of violation under this article is presumed to have been received on the tenth day after the date the notice of violation was mailed.

(e) A person who receives a notice of violation of this article may pay the civil penalty in lieu of appearing at an administrative hearing within 15 days after receipt of the notice of violation.

(f) In lieu of issuing a notice of violation of this article, the police department may mail a warning notice to the owner.

(Ord. No. 04-1312, § 2, 12-21-04)

#### **Sec. 45-484. Administrative adjudication hearing.**

(a) A person who receives a notice of violation of this article may contest the imposition of the civil penalty by submitting a written request to the municipal courts administration department for an administrative adjudication of the civil penalty within 15 days after receipt of the notice of violation. Upon receipt of a timely request, the municipal courts administration department shall notify the person of the date and time of the administrative adjudication hearing. The administrative adjudication hearing shall be held before a hearing officer appointed by the mayor.

(b) Failure to pay a civil penalty or to contest liability in a timely manner is an admission of liability in the full amount of the civil penalty

assessed in the notice of violation and constitutes a waiver of the right to appeal under section 45-487 of this Code.

(c) Failure to appear at an administrative adjudication hearing after having requested a hearing is an admission of liability for the full amount of the civil penalty assessed in the notice of violation and constitutes a waiver of the right to appeal under section 45-487 of this Code.

(d) The civil penalty shall not be assessed if:

- (1) After a hearing, the hearing officer enters a finding of no liability; or
- (2) Within the time prescribed in the notice of violation, the person against whom the civil penalty is to be assessed submits the written proof described in item 45-483(c)(10) of this Code.

(e) A person who is found liable after an administrative adjudication hearing or who requests an administrative adjudication hearing and thereafter fails to appear at the time and place of the hearing is liable for administrative hearing costs in the amount of \$25.00 in addition to the amount of the civil penalty assessed for the violation. A person who is found liable for a civil penalty after an administrative adjudication hearing shall pay the civil penalty and costs within ten days after the date on which the hearing ended.

(f) In an administrative adjudication hearing, the issues must be proved at the hearing by a preponderance of the evidence. The reliability of the photographic traffic monitoring system used to produce the recorded image of the violation may be attested to in an administrative adjudication hearing by affidavit of an officer or employee of the city or the entity with which the city contracts to install or operate the system and who is responsible for inspecting and maintaining the system. Such an affidavit is admissible in a proceeding under this article, is evidence of the facts contained in the affidavit, and is prima facie evidence of the violation alleged in the notice of violation.

(g) Notwithstanding anything in this article to the contrary, a person who fails to pay the amount of a civil penalty or to contest liability in a timely manner is entitled to an administrative adjudication hearing on the violation if:

- (1) The person files an affidavit with the hearing officer stating the date on which the person received the notice of violation that was mailed to the person; and
  - (2) Within the same period required by subitem 45-483(c)(9)b. of this Code for a hearing to be timely requested but measured from the date the mailed notice was received as stated in the affidavit filed under item (1) above, the person requests an administrative adjudication hearing.
- (Ord. No. 04-1312, § 2, 12-21-04)

#### **Sec. 45-485. Affirmative defenses.**

(a) It shall be an affirmative defense to liability under this article, to be proven by a preponderance of the evidence, that:

- (1) The traffic-control signal was not in proper position and sufficiently legible to an ordinarily observant person;
- (2) The operator of the motor vehicle was acting in compliance with the lawful order or direction of a police officer;
- (3) The operator of the motor vehicle violated the instructions of the traffic-control signal so as to yield the right-of-way to an immediately approaching authorized emergency vehicle;
- (4) The motor vehicle was being operated as an authorized emergency vehicle under Chapter 546 of the Texas Transportation Code and the operator was acting in compliance with that chapter;
- (5) The motor vehicle was a stolen vehicle and being operated by a person other than the owner of the vehicle without the effective consent of the owner;
- (6) The license plate depicted in the recorded image of the violation was a stolen plate

being displayed on a motor vehicle other than the motor vehicle for which the plate had been issued;

- (7) The vehicle was being operated by a person other than the owner of the vehicle;
- (8) The presence of ice, snow, unusual amounts of rain or other unusually hazardous road conditions existed that would make compliance with this article more dangerous under the circumstances than non-compliance; or
- (9) The person who received the notice of violation was not the owner of the motor vehicle at the time of the violation.

(b) To demonstrate that at the time of the violation the motor vehicle was a stolen vehicle or the license plate displayed on the motor vehicle was a stolen plate, the owner must submit proof acceptable to the hearing officer that the theft of the vehicle or license plate had been timely reported to the appropriate law enforcement agency.

(Ord. No. 04-1312, § 2, 12-21-04)

#### **Sec. 45-486. Order of the hearing officer.**

At the conclusion of the hearing, the hearing officer shall issue an order stating whether or not the person charged is liable for the violation and the amount of any civil penalty, late penalty, and administrative adjudication cost assessed against the person. The order shall be filed with the chief clerk of the municipal courts. All such orders shall be kept in a separate index or file by the chief clerk of the municipal courts.

(Ord. No. 04-1312, § 2, 12-21-04)

#### **Sec. 45-487. Appeal.**

A person who is found liable after an administrative adjudication hearing may appeal that finding of liability to the municipal courts by filing a notice of appeal with the chief clerk of the municipal courts. The notice of appeal must be filed not later than 31 days after the date on which the administrative adjudication hearing officer entered the finding of liability and shall be accompanied by the payment of an appellate filing fee of \$50.00. Unless the person, on or before the date of filing of the notice of appeal, posts a bond in the

amount of the civil penalty and any late fees, an appeal does not stay the enforcement of the civil penalty. An appeal shall be determined by the municipal courts by trial de novo. The affidavits submitted under subsection 45-484(f) of this Code shall be admitted by the municipal judge in the trial de novo, and the issues must be proved by a preponderance of the evidence.  
(Ord. No. 04-1312, § 2, 12-21-04)

**Sec. 45-488. Effect of liability; exclusion of civil remedy; enforcement.**

(a) The imposition of a civil penalty under this chapter is not a conviction and may not be considered a conviction for any purpose.

(b) No civil penalty may be imposed under this article on the owner of a motor vehicle if the operator of the vehicle was arrested or was issued a citation and notice to appear by a peace officer for a violation of Section 544.007(d) of the Texas Transportation Code recorded by the photographic traffic monitoring system.

(c) The city attorney is authorized to file suit to enforce collection of a civil penalty assessed under this article.  
(Ord. No. 04-1312, § 2, 12-21-04)

**Sec. 45-489. Disposition of fees.**

All penalties and fees collected from the imposition of civil liability under this article shall be first expended to defray all costs associated with the operation and enforcement of the photographic traffic monitoring system and any remaining funds shall be deposited in the police special services fund to be expended for public safety programs.

**Secs. 45-490—45-500. Reserved.**

**ARTICLE XX. MINIMOTORBIKES**

**Sec. 45-501. Definitions.**

As used in this article, the following terms shall have the meanings ascribed to them in this section, unless the context of their usage clearly indicates another meaning:

*Alley* is defined in section 39-1 of this Code.

*Minimotorbike* means a self-propelled vehicle that is equipped with an electric motor or internal combustion engine having a piston displacement of less than 50 cubic centimeters, is designed to propel itself with not more than two wheels in contact with the ground, has a seat or saddle for the use of the operator, is not designed for use on a highway, and is ineligible for a certificate of title under Chapter 501 of the Transportation Code. The term does not include:

- (1) A golf cart, moped, motorcycle, or tractor;
- (2) An electric bicycle or motor-driven cycle, as defined by Section 541.201 of the Transportation Code;
- (3) A motorized mobility device, as defined by Section 542.009 of the Transportation Code;
- (4) An electric personal assistive mobility device, as defined by Section 551.201 of the Transportation Code; or
- (5) A neighborhood electric vehicle or a motor assisted scooter, as defined by Section 551.301 of the Transportation Code.

*Park* means any portion of the city's park system, including any park owned by another entity and managed by the city.

*Roadway* is defined in section 32-222 of this Code.

*Sidewalk* is defined in section 32-222 of this Code.

*Street* is defined in section 10-48 (4) of this Code.  
(Ord. No. 05-664, § 2, 5-24-05)

**Sec. 45-502. Offense involving the operation of minimotorbikes on roadways and parks within the city.**

(a) A person commits an offense if the person rides or operates, or as the parent or guardian of a child younger than 18 years of age permits the



child to ride or operate, a minimotorbike on any roadway, street, alley, sidewalk or park within the city limits.

(b) An offense under this section is a misdemeanor punishable by a fine of not more than \$500.00.

(Ord. No. 05-664, § 2, 5-24-05)